

**NOTE**

This order is being pronounced on behalf of the Division Bench by Hon'ble President, Shri M.M.Kumar in open Court in pursuance of power under Rule 151 of the NCLT Rules, 2016. The order is duly signed by both Hon'ble Members.



(Vikram Singh)

Deputy Director

13.01.2017

विक्रम सिंह / Vikram Singh

उप निदेशक / Deputy Director

राष्ट्रीय कम्पनी विधि अधिकरण / National Company law Tribunal

भारत सरकार / Govt. of India

नई दिल्ली / New Delhi

**NATIONAL COMPANY LAW TRIBUNAL**  
**PRINCIPAL BENCH**  
**NEW DELHI**

C.P NO.  
CA NO. CAA-1(PB)/2017

**CORAM:**

**PRESENT: CHIEF JUSTICE M. M. KUMAR**  
**Hon'ble President**

**SH.M.K Hanjura**  
**Hon'ble Member(J)**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF PRINCIPAL BENCH OF THE  
NATIONAL COMPANY LAW TRIBUNAL ON 13.01.2017

NAME OF THE COMPANY: **JVA Trading Pvt Ltd**  
**And**  
**C&S Electric Ltd**

SECTION OF THE COMPANIES ACT: 230-232

<u>S.NO.</u>	<u>NAME</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	MR ARUN KATHPALIA ,	Adv	} Joint Applicants	Prachi Johri
2.	MR KRISHNENDU DATTA ,	Adv		
3.	Ms PRACHI JOHRI ,	Adv		
4.	MR. KSHIT			

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, PRINCIPAL BENCH  
NEW DELHI**

**Company Application No.A.1/PB/2017**

**Present: CHIEF JUSTICE (Retd.) SHRI M.M.KUMAR, HON'BLE PRESIDENT  
& SHRI R.VARADHARAJAN, MEMBER ( JUDICIAL)**

**In the matter of:**

Sections 230-232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016.

**AND**

**IN THE MATTER OF:**

**JVA TRADING PRIVATE LIMITED  
(TRANSFEROR COMPANY)**

**AND**

**C&S ELECTRIC LIMITED  
(TRANSFeree COMPANY)**

**AND**

**Their respective Shareholders and Creditors**

**MEMO OF PARTIES**

**1. JVA TRADING PRIVATE LIMITED**

Company registered under the Companies Act, 2013

Through its authorized representative: Mr.Lalit Krishan Khanna

Registered Office:

44, Okhla Industrial Estate Phase-III,

New Delhi-110 020  
CIN: U51909DL2016PTC302972

.....Applicant Company No.1

**2. C&S ELECTRIC LIMITED**

Company registered under the Companies Act, 2013  
Through its authorized representative: Mr.Lalit Krishan Khanna  
Registered Office:  
222, Okhla Industrial Estate Phase-III,  
New Delhi-110 020  
CIN: U31909DL1971PLC005672

.....Applicant Company No.2

**Counsel for the Applicants: Mr.Arun Kathpalia, Senior Advocate  
Mr.Krishanendu Datta, Advocate**

**ORDER**

This is an application which is jointly filed by the applicant companies herein, namely JVA Trading Private Limited (for brevity "Transferor Company") and C & S Electric Limited (for brevity "Transferee Company") under Section 230 to 232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the Scheme of Amalgamation proposed between the applicants and the said Scheme also annexed as Annexure "A" to the application with the following prayers:-



- I. Dispensing with requirement for convening the meeting of the Equity Shareholders of the Transferor Company and also to dispense with the requirement of issue and publication of notices for the same;
- II. Issuing/passing necessary Directions/Order as it may deem fit for the purpose of convening the meeting of the Secured and Unsecured Creditors and members or any class thereof of the Transferor Company including the requirement of issue and publication of notices for the same;
- III. Issuing/passing necessary Directions/Order in respect of Applicant Company 2 as it may deem fit for the purpose of convening the meeting of the Equity Shareholders, Secured and Unsecured Creditors and members or any class thereof of the Transferee Company including the requirement of issue and publication of notices for the same;
- IV. Issuing necessary direction for appointment of Chairperson and scrutinizer for the meeting or meetings to be held and terms of appointment and remuneration for the Chairperson;
- V. Issuing necessary directions fixing the time period within which the chairperson shall report the result of the meeting to this Hon'ble Tribunal;
- VI. Issuing direction for permitting the filing of application, petition, other documents as may be required for the purpose of sanctioning the proposed

Scheme of Amalgamation between JVA Trading Private Limited and C&S Electric Limited and their respective Shareholders and Creditors;

- VII. Passing such other and further orders as are deemed necessary in the facts and circumstances of the case.

An Affidavit in support of the above joint application sworn to by one Mr Lalit Krishan Khanna, being the Company Secretary and Senior Vice President – Corporate & Legal of the applicant companies has also been filed along with the application. Mr Arun Kathpalia, Senior Counsel along with the Mr Krishanendu Dattta, Counsel for the joint applicants took us through the averments made in the application as well as the typed set of documents annexed there with. Learned Counsel represents that the Scheme does not contemplate any corporate debt restructuring exercise as contemplated under Section 230(2) of the Act and to this effect the applicants have also filed an additional affidavit dated 03.01.2017 sworn to by the above named Mr Lalit Krishan Khanna. It is further represented that a joint application as filed by the applicants are maintainable in view of Rule 3(2) of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016 and it is also represented that the registered office of both the applicant companies are situated within the territorial jurisdiction of this Tribunal. In relation to JVA Trading Private Limited being the Transferor Company in the Scheme marked as Annexure – A, Learned Counsel maintains that the said company is having only 4 shareholders all of whom have given

their consent to the Scheme of Amalgamation constituting 100% in value and number,; A prayer has thus been made for dispensing with the meeting of the Equity Shareholders and also to dispense with the requirement of issue and publication of notices for the same.

Further in respect to the Transferee Company in relation to unsecured creditors to whom the Transferee company owes less than Rs.2,00,000/- and who constitute less than 3% in value of the total amount owed to unsecured creditors, it is represented that they are basically creditors for supplies and will not be prejudiced in any way by the Scheme, as under the Scheme their liabilities are not in any way sought to be extinguished and hence individual notices to the unsecured creditors to whom the Transferee Company owes less than Rs.2,00,000/- may be dispensed. Their total number is claimed to be 373.

Before venturing into the merits of the application it is incumbent on this Tribunal to be certain about its jurisdiction to entertain the present application. The provisions of Sections 230 to 233 and Section 235 to 240 of Companies Act, 2013 vest this Tribunal with the jurisdiction to entertain applications of the above nature. These provisions were notified on 07.12.2016 vide S.O.3677(E) with effect from 15<sup>th</sup> December, 2016 and the relevant rules titled as Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 were notified on 14<sup>th</sup> December,2016 vide Notification No.

GSR 1134(E)[F.No.2/31/CAA/2013/-CL-V] effective from 15.12.2016. The above joint application seems to have been filed, as evident from the endorsement made by the Registry of this Tribunal on 21.12.2016 and in light of the notification of the provisions as well as Rules framed there under this Tribunal is clothed with the jurisdiction to entertain the above joint application under the 2013 Act and hence we proceed on the said basis. Since the registered office of both the applicants is situated New Delhi, this Tribunal also has the territorial jurisdiction to entertain the above application filed jointly by both the companies involved in the Scheme of Amalgamation. The applicability of provisions of Section 233 of the Companies Act, 2013 is also not attracted in view of the position that the Scheme of Amalgamation being the fulcrum of this application is not contemplated between two small companies or between a holding and its wholly subsidiary. In light of the above position of law this Tribunal proceeds to entertain this application seeking directions for convening a meeting of its members and creditors for the consideration of Scheme of Amalgamation by way of merger between the applicant companies under the new dispensation.

A perusal of the application discloses that both the applicant companies have disclosed the objects for which the companies have been incorporated and in support thereof they have filed their respective Memorandum and Articles of Association along with their respective Certificate of Incorporation. The capital structure of the respective companies have also been disclosed in the joint application filed as on 31.10.2016 for





the Transferor Company and as on 31.03.2016 for the Transferee Company and averred that as on the date of filing this application there has been no subsequent change to the capital structure of the respective companies. In relation to the Transferor Company since the company has been incorporated on 13.07.2016 provisional financial statement as at 31<sup>st</sup> October 2016 certified by one of its director has been filed, while in relation to the Transferee Company audited financial statements for the year ended 31.03.2016 as well as the provisional financial statements as at 31.10.2016 has been filed.

From a perusal of the joint application, the affidavit and typed set filed along with the application, it is evident that both the companies are engaged in electric and electronic goods. The Transferor Company is in trading and the Transferee Company is engaged in manufacturing. In relation to the Scheme of Amalgamation per se it is averred in the application that since the businesses of both the Transferor and Transferee companies are complementary to each other and in order to achieve benefits as set out in 'Rationale of the Scheme of Amalgamation' as figuring in Annexure – 'A' to the application, the Board of Directors of the respective companies vide Board Meeting held on 16.12.2016 in relation to the Transferor Company and 05.12.2016 in relation to the Transferee Company as well as 16.12.2016 of the merger committee of the Transferee Company, (certified copies of all of which have been filed) have decided to merge the Transferor Company with the Transferee Company on and from the appointed date specified in the Scheme as 01<sup>st</sup> day of December 2016 and all the assets

and liabilities of the Transferor Company would be transferred to the Transferee Company. The combined capital structure would stand at Rs.71,00,00,000/- being the aggregate of the present paid up capital of the respective companies. The Share Exchange Ratio under the proposed Scheme has also been disclosed in the additional affidavit dated 03.01.2017 filed on behalf of the joint applicants. List of Equity Shareholders, Secured Creditors and Unsecured Creditors of both the Transferor and Transferee Companies have also been duly filed along with the joint application by the applicants as on 31.10.2016.

In relation to members/equity shareholders, secured creditors and unsecured creditors the following details emerge upon a perusal of the details annexed with the application, namely:

	Transferor Company	Transferee Company
Members	4	317
Secured Creditors	1	11
Unsecured Creditors	3	1060

This Tribunal has perused the joint application of the Transferor and Transferee Companies and have also heard the oral submissions of the Learned Counsels for the applicants. In relation to the dispensation of the meeting of the equity shareholders of

the Transferor Company is concerned we are not inclined to grant dispensation taking into consideration the provisions of Companies Act, 2013 and the rules framed there under both of which expressly do not clothe this Tribunal with the power of dispensation in relation to the meeting of shareholders/members. On the other hand reference to Section 230(9) of the Companies Act, 2013 which provisions was relied by the Learned Counsel for the applicants discloses that the Tribunal may dispense with calling of a meeting of creditor or class of creditors where such creditors or class of creditors, having at least ninety per cent value, agree and confirm, by way of affidavit, to the scheme of compromise or arrangement and does not provide for the dispensation of the meeting of members.

Further the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 more specifically Rule 5 which provides for directions to be issued by this Tribunal discloses that determining the class or classes of creditors or of members meeting or meetings have to be held for considering the proposed compromise or arrangement; or dispensing with the meeting or meetings for any class or classes of creditors in terms of sub-section (9) of section 230.

Keeping in view the above provisions, dispensation of the meeting of members of the company cannot be entertained. Taking into consideration the above, the following directions are issued in relation to calling, convening, and holding of the

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meeting of the equity shareholders, secured creditors and unsecured creditors of the Transferor and Transferee Companies as follows:-

- i. The notice for the following meetings shall be issued by the Transferor or the Transferee Company, as applicable:

In relation to the Transferor Company:

- a. Meeting of members of the transferor company at 11 am at Auditorium attached to the office of Okhla Industrial Estate Association, Exhibition Complex, Okhla Industrial Estate, New Delhi-110 020 on 27.02.2017 subject to notice of meeting being issued.
- b. Meeting of secured creditors of the transferor company at 12 noon at Auditorium attached to the office of Okhla Industrial Estate Association, Exhibition Complex, Okhla Industrial Estate, New Delhi-110 020 on 27.02.2017 subject to notice of meeting being issued in relation to the Transferee Company:
- c. Meeting of unsecured creditors of the transferor company at 1 pm at Auditorium attached to the office of Okhla Industrial Estate Association, Exhibition Complex, Okhla Industrial Estate, New Delhi-110 020 on 27.02.2017 subject to notice of meeting being issued.

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In relation to the Transferee Company:

- d. Meeting of members of the transferee company at 11 am at Auditorium attached to the office of Okhla Industrial Estate Association, Exhibition Complex, Okhla Industrial Estate, New Delhi-110 020 on 28.02.2017 subject to notice of meeting being issued.
  - e. Meeting of secured creditors of the transferee company at 12 noon at Auditorium attached to the office of Okhla Industrial Estate Association, Exhibition Complex, Okhla Industrial Estate, New Delhi-110 020 on 28.02.2017 subject to notice of meeting being issued.
  - f. Meeting of unsecured creditors of the transferee company at 1 pm at Auditorium attached to the office of Okhla Industrial Estate Association, Exhibition Complex, Okhla Industrial Estate, New Delhi-110 020 on 28.02.2017 subject to notice of meeting being issued.
- ii. The quorum for the meeting shall be 3 in number for the equity shareholders meeting of the Transferor company. In relation to the Transferee company, the quorum shall be 60 in number and more than 20% in value in terms of the total equity share capital for the equity shareholders meeting.
  - iii. If the quorum is not present at the commencement of the meeting, the meeting would be adjourned for 30 minutes and thereafter, the members present in person or through proxy who would not be less than 2 and 5 respectively for the

transferor company and the transferee company would be treated as proper quorum.

- iv. The quorum for the meeting shall be 1 in number for secured creditors of the Transferor company. In relation to the Transferee Company, the quorum shall be 11 in number.
- v. The quorum for the meeting shall be 3 in number for unsecured creditors of the Transferor company. In relation to the Transferee Company, the quorum shall be 150 in number.
- vi. In case the quorum as noted above for the above meetings is not present at the meetings, then the meetings shall be adjourned by half an hour, and thereafter the persons present and voting shall be deemed to constitute the quorum. For the purpose of computing the quorum the valid proxies shall also be considered, if the proxy in the prescribed form, duly signed by the person entitled to attend and vote at the meeting, filed with registered office of the applicant company at least 48 hours before the meetings. The Chairperson and the Alternate Chairperson shall ensure that the proxy registers are properly maintained.
- vii. Chief Justice (Retd.) V.K.Gupta (Mobile No.9650333000) is appointed as the chairperson for the meetings to be called under this order and the relevant law. The Hon'ble Judge shall be paid Rs.200,000/- lump sum for his services as the Chairperson. Mr.Sourabh Kalia, Advocate of the NCLT is appointed as the

  


alternative chairperson for the meetings to be called under this order and the relevant law. He shall be paid Rs.100,000/- for his services. The Scrutinizer for the meetings shall be Ms.Mamta Binani, Company Secretary (Mobile No.09831099551) and she shall be paid Rs.100,000/- for her services.

- viii. That individual notices of the said meetings shall be sent by the Applicant Companies through registered post or speed post or through courier or through e-mail 30 days in advance before the scheduled date of the meeting, indicating the day, date, the place and the time as aforesaid, together with a copy of Scheme of Amalgamation, copy of explanatory statement, required to be sent under the Companies Act, 2013 and the prescribed form of proxy shall be sent alongwith and any other documents as may be prescribed under the Act.
- ix. That the Applicant Companies shall jointly publish advertisement with a gap of atleast 30 clear days before the aforesaid meetings, indicating the day, date and the place and time as aforesaid, to be published in the English Daily 'Hindustan Times' and Hindi Daily 'Punjab Kesari (Delhi Edition) stating the copies of Scheme of Amalgamation, the Explanatory Statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and the form of proxy shall be provided free of charge at the registered office of the Applicant Companies.
- x. Voting shall be allowed on the proposed Scheme by voting in person, by proxy, through postal ballot or through electronic means. The Chairperson shall be



responsible to report the result of the meeting within 3 days of the conclusion of the meeting with a vote on the proposed scheme.

- xi. The companies shall individually send notice to Central Government, the Income Tax Authorities, Registrar of Companies and to such other regulators who may have significant bearing on the operation of the applicant companies along with copy of required documents and disclosures required under the provisions of Companies Act, 2013 read with Companies (Compromises, Arrangements, Amalgamations) Rules, 2016.
- xii. The applicant companies further furnish copy of the Scheme free of charge within 1 day of any requisition for the Scheme made by every creditor or member of both companies entitled to attend the meetings as aforesaid.
- xiii. The authorized representative of the Applicant Companies shall furnish an affidavit of service of notice of meetings and publication of advertisement and compliance of all directions contained herein at least a week before the proposed meetings.
- xiv. All the aforesaid directions are to be complied with strictly in accordance with the applicable law including forms and formats contained in the Companies (Compromises, Arrangements, Amalgamations) Rules, 2016 as well as the provisions of the Companies Act, 2013. The undertaking of the authorized representatives of the Applicant Companies to this effect is accordingly taken on record.





The application stands allowed in the aforesaid terms.

SD/-  
13.01.2017  
(CHIEF JUSTICE M.M.KUMAR)  
PRESIDENT

SD/-  
(R.VARADHARAJAN)  
MEMBER (JUDICIAL)